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NECESSITY OF ENDING THE ECONOMIC, COMMERCIAL AND FINANCIAL EMBARGO IMPOSED BY THE UNITED STATES OF AMERICA AGAINST CUBA

Letter dated 24 August 1992 from the Chargé d'affaires a.i. of the Permanent Mission of Cuba to the United Nations addressed to the Secretary-General

I have the honour to enclose herewith a recent study by a group of legal and economic experts entitled "Recent measures by the United States of America to reinforce the illegal economic, commercial and financial blockade against Cuba".

During consideration of item 142 of the agenda of the forty-sixth session of the General Assembly, entitled "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba", we had the opportunity to provide details of the many ways in which the above-mentioned embargo is extraterritorial in nature and goes beyond the limits of the national jurisdiction of the United States under international law, and also violates the sovereignty of other States as well as that of Cuba (A/46/193/Add.7 of 13 September 1991 and A/46/599 of 25 October 1991).

This recent measure by the United States Government is a significant addition to the list of actions taken by that country against Cuba which exceed its national jurisdiction. Like previous measures that were extraterritorial in nature, this latest attempt to damage bilateral commercial relations with Cuba also violates the cardinal principle of non-interference

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* A/47/150.

in the internal affairs of States, to the detriment both of third countries and of Cuba.

Consequently, I should be grateful if you would have this letter and its annex published and distributed as a document of the General Assembly under item 39 of the provisional agenda.

(Signed) Carlos ZAMORA RODRIGUEZ
Ambassador Extraordinary
and Plenipotentiary
Charge d'affaires a.i.

ANNEX

Recent measures by the United States of America to reinforce the illegal economic, commercial and financial blockade against Cuba

On 24 April 1992, the United States closed its ports to all third-country vessels "carrying goods or passengers to or from Cuba" (57 Federal Register 15216 (24 April 1992)). By thus disrupting natural shipping routes and driving up freight costs, the United States seeks to discourage Cuba's export of its own products and its import of third-country products.

Not content, the United States extended this new prohibition to third-country vessels carrying goods in which Cuba has any "interest". Cuba is deemed to have an "interest" in goods owned by third-country companies if they are made or derived in whole or in part of any article which is the growth, produce or manufacture of Cuba. Thus, for example, a third-country vessel could not put into a United States port if it was carrying from one third country to another steel products manufactured by a third-country company with trace amounts of Cuban-origin nickel or third-country food products processed with Cuban-origin sugar. With this prohibition, the United States seeks to discourage third-country companies from purchasing Cuban-origin articles for use in the manufacture of their own exports.

To underscore their importance, the President of the United States personally announced these new administrative measures (statement of the President, the White House, Office of the Press Secretary (Kennebunkport, Maine), 18 April 1992). Far from exhibiting any appreciation of the constraints of international law and comity, the United States President brazenly proclaimed the United States intention "to isolate Cuba" until it abandons its internal political institutions in favour of those more to the liking of the United States. In a subsequent statement (letter of 4 June 1992) to Congress, the United States President, with equal disregard for international law and comity, proclaimed that these measures are "meant to discourage countries from increasing trade with Cuba and limit the development of tourism". There is no pretense whatsoever that the closing of United States ports to third-country vessels, or the avowed United States "policy of economic and political isolation" of which it is a part, is in response to any activity of Cuba in the international sphere or is in any way related to the security interests of the United States.

At the same time, the United States President endorsed the legislative initiative to close United States ports to third-country vessels for 180 days after they trade in a Cuban port without regard to the origin or destination of the cargo on board. Thus, for example, a third-country vessel that offloads cargo in Cuba and takes nothing on board could not enter a United States port for 180 days. The same would be true for a third-country vessel that takes on cargo in Havana and delivers it in a third country (testimony of State Department representative David Dworkin, hearings on the Cuban Democracy Act of 1992, H.R. 5322, House Foreign Affairs Committee, 28 May 1992).

The international community has already condemned these actions as being in derogation of third-country rights and interests. In a memorandum circulated in the United States Congress, the European Community wrote of the 18 April administrative measures now in effect:

> "These regulations are in conflict with long-standing rules on comity and international shipping and will adversely affect the European Community's trade with the United States."

Referring both to the 18 April administrative measures and the United States President's endorsement of the shipping provision in the Cuban Democracy Act, the European Community wrote further:

> "We are concerned at the apparent willingness of the United States Government to endorse passage of a Cuban democracy act containing extraterritorial elements which will disrupt the normal business activities of companies and shipping lines based in member States of the European Community. These measures would constitute the second batch of actions (following the Treasury regulations referred to above) which would be aimed at forcing foreign persons outside the proper jurisdiction of the United States to submit to United States law and foreign policy.
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> "As we have reiterated on countless occasions, such extraterritorial extension of United States jurisdiction is unacceptable as a matter of law and policy ...
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> "We hope that the United States Administration and Congress will reflect further on the expediency of supporting legislation which has the capacity to cause damage to trade relations at a time when the bilateral and multilateral agenda is already overcharged. Recognition by allied countries of different economic and foreign policy approaches to countries should be a normal result of international discourse between them. Attempts to force one country's agenda on the other can only lead to conflict and to a denial of the principles that the European Community-United States Transatlantic Declaration is designed to underpin."

Earlier, in response to a similar proposal then pending in the United States Congress to close United States ports, the European Community had stressed that the proposal, "which even in war time would be an infringement of the international law on neutral shipping, is completely unacceptable in peace time", (Démarche, 18 April 1990), and "would be in conflict with long-standing rules on comity and international law" (Démarche, 7 April 1992).

What was said with respect to the United States infringing upon the rights and interests of the European Community is of course equally true with respect to the rights and interests of all the Member States of the United Nations.

Even the United States previously recognized that the shipping measures it has now adopted would violate the rights of third countries. In 1975, the Organization of American States (OAS) lifted its collective sanctions against Cuba and resolved "to leave the State parties to the Rio Treaty free to normalize or conduct in accordance with the national policy and interests of each their relations with the Republic of Cuba at the level and in the form that each State deems advisable" (Final Act of the Sixteenth Meeting of Consultation of Ministers of Foreign Affairs, OAS/Ser.F/11.16, Doc. 9/75 rev.2, 29 July 1975). The United States expressly recognized that "in order to conform" with this action of OAS it was necessary for it to repeal those aspects of its economic blockade which penalized third-country vessels that trade with Cuba (73 Department of State Bulletin 404 (1975)). Accordingly, "in keeping with this action by the OAS," the United States repealed its long-standing prohibition against the bunkering of third-country vessels engaged in trade with Cuba (40 Federal Register 171, p. 10,508 (3 September 1975)). The measure adopted now is even more extreme than that which, in 1975, the United States acknowledged would violate the rights of third countries in the absence of collective sanctions, since it denies entry to United States ports altogether and not merely bunkering privileges. As stated in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted in 1970 by the General Assembly without dissent:

> "No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. Consequently, armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural elements, are in violation of international law.
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> "No State may use or encourage the use of economic, political or any other type of measures to coerce another State in order to obtain from it the subordination of the exercise of its sovereign rights and to secure from it advantages of any kind ..."

The same clear prohibition, which emanates from the Charter of the United Nations and is universally acknowledged to have attained the status of binding international law, has been repeated and reaffirmed in numerous other resolutions of the General Assembly, and in other international instruments such as, for example, the Vienna Convention on the Law of Treaties and the Charter of OAS.

The new measure imposed by the United States violates the rights of third countries to determine their own "external affairs". By disrupting existing shipping routes and increasing the costs of trade with Cuba, the United States attempts - as it frankly concedes - to coerce third countries into abandoning their sovereign decision to maintain normal trade relations with another country.

The new measure is similarly meant to coerce Cuba's sovereign will with respect to its "internal" affairs. It cannot be doubted that the intensity and comprehensive character of the United States embargo, now augmented by this new measure, amounts to economic coercion. Nor can it be doubted from the historical record or from the United States unabashed explanations for continuing its blockade today that the purpose of this unparalleled economic coercion against Cuba is "the subordination of the exercise of its sovereign rights and to secure from it advantages".

The United States measures are also in flagrant disregard of the principles of free trade and commerce reaffirmed many times by the General Assembly and set forth definitively in the Charter of Economic Rights and Duties of States (resolution 3281 (XXIX)), which provides in relevant part:

"Article 4

"Every State has the right to engage in international trade and other forms of economic cooperation irrespective of any differences in political, economic and social systems. No States shall be subjected to discrimination of any kind based solely on such differences ..."

This provision, as others in the Charter of Economic Rights and Duties of States, applies to the field of international economic relations the fundamental principles of sovereign equality of States, non-intervention and the duty to cooperate, which are the bedrock of the Charter of the United Nations and of international law. It is noteworthy that, while some member States may have expressed reservations with respect to this or other provisions of the Charter of Economic Rights and Duties of States on a variety of grounds, they have none the less expressed through the European Community's above-quoted communication their objection to the United States most recent measure, so exteme and unjustified is its interference with their sovereign decision to maintain normal trade and shipping relations with Cuba.

Moreover, the United States measures patently violate both the rights of third countries and of Cuba to free trade and shipping guaranteed by the General Agreement on Tariffs and Trade, which is fully binding on the United States. Article V of the General Agreement on Tariffs and Trade (GATT) recognizes "the freedom of transit through the territory of each contracting party, via the routes most convenient for international transit" of goods, vessels and other means of transport "to or from the territory of other contracting parties". This right of free transit applies irrespective of the "place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of [the] goods". The United States refusal, therefore, to permit third-country vessels to enter United States ports because they are carrying cargo in transit to or from Cuba derogates in the starkest terms from its obligations to the international community under article V.

The right of free transit codified in article V, moreover, has long been recognized as an essential element in the international protection of

commerce. As long ago as 1921, the Convention and Statute on Freedom of Transit (the "Barcelona Convention"), upon which article V of GATT was based, required States to permit free transit by rail or waterway for international commerce. The Permanent Court of International Justice affirmed the right of free transit recognized in the Barcelona Convention in its decision in The Railway Traffic Between Lithuania and Poland Case (Ser. A/B, No. 42, pp. 108, 120 and 121 (1931)).

The executive order is likewise contrary to fundamental treaty obligations because, in violation of article XI of GATT, it imposes impermissible restrictions upon the importation into the United States of goods from third countries with which the United States has no dispute. Article XI expressly forbids any "prohibitions or restrictions other than duties, taxes or other charges" upon the importation of a product of another contracting State. Yet the United States has imposed a restriction not authorized by article XI, namely, that the imported goods not be shipped to the United States aboard vessels that are also carrying cargo in transit to or from Cuba.

There can be no justification for the United States violation of these treaty rights of transit and commerce. Article XXI relieves a contracting party from its obligations under GATT only to the extent necessary for the "protection of its essential security interests ... in time of war or other emergency in international relations". As noted, the United States no longer even pretends that Cuba threatens its security interests, and the only emergency in international relations is that posed by the United States continuing efforts to intervene in Cuba's internal affairs and deny the rights of third countries to determine their own relations with Cuba.

Thus, this newest measure serves to confirm our prior contention that the United States blockade violates the most basic principles of the United Nations and of international law, and merits the condemnation of the General Assembly.